

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES ANTHONY BROOKS,

Petitioner,

v.

RONALD DAVIS,

Respondent.

Case No. [16-cv-03910-RS](#) (PR)

ORDER OF DISMISSAL

INTRODUCTION

The Court ordered petitioner to show cause why the action should not be dismissed for lack of jurisdiction. He has failed to show such cause. Accordingly, this federal habeas corpus action is **DISMISSED** for want of jurisdiction.

DISCUSSION

Petitioner seeks federal habeas relief from his 2007 state convictions for forced oral copulation and felony false imprisonment. For these convictions, he received a sentence of 3 years and 8 months. Because it is nearly a decade after this sentence was imposed, it is unlikely that petitioner is still in custody for these offenses. If he is not in custody for the convictions he seeks to challenge, the Court lacks jurisdiction over his habeas petition.

The federal writ of habeas corpus is only available to persons “in custody” at the time the petition is filed. *See* 28 U.S.C. §§ 2241(c), 2254(a); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). This requirement is jurisdictional. *Id.* A petitioner who files a habeas petition after he has fully served his sentence and who is not subject to court supervision is not “in custody” for the purposes of this Court’s subject matter jurisdiction and his petition is therefore properly dismissed. *See De Long v. Hennessey*, 912 F.2d

1 1144, 1146 (9th Cir. 1990).

2 The custody requirement does not mandate that a prisoner be physically confined.
 3 *Maleng v. Cook*, 490 U.S. 488, 491 (1989). A petitioner who is on parole at the time of
 4 filing is considered to be in custody, *see Jones v. Cunningham*, 371 U.S. 236, 241–43
 5 (1963) and *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990), as is a petitioner on
 6 probation, *see Chaker v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005). Custody is found
 7 where the sentence imposed significantly restrains petitioner's liberty, *see, e.g., Dow v.*
 8 *Circuit Court*, 995 F.2d 922, 923 (9th Cir. 1993) (sentence of mandatory attendance to
 9 fourteen-hour alcohol abuse rehabilitation program sufficient to place petitioner in
 10 custody), but not where only a fine is imposed, *see Dremann v. Francis*, 828 F.2d 6, 7 (9th
 11 Cir. 1987) (sentence which only imposes fine not enough to satisfy custody requirement
 12 even if petitioner faces imprisonment for failure to pay).

13 Petitioner has not shown that he is in custody for the convictions he challenges by
 14 way of his petition. Rather, his responses address the merits of his habeas claims. They
 15 entirely fail to address the issues of custody and jurisdiction. Therefore, he has failed to
 16 show cause why the petition should not be dismissed.


17 CONCLUSION

18 This federal habeas action is DISMISSED for want of jurisdiction. The order to
 19 show cause is DISCHARGED.

20 Petitioner's motion for a stay (Docket No. 11) is DENIED as moot. The Clerk shall
 21 terminate Docket No. 11, enter judgment in favor of respondent, and close the file.

22 **IT IS SO ORDERED.**

23 **Dated:** August 30, 2016

24 
 25 RICHARD SEEBORG
 26 United States District Judge